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Order 2002-8-16



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

**Action on IATA Agreement
Issued by the Department of Transportation
on the 15th day of August, 2002**

Served: August 20, 2002

Application of the International Air
Transport Association for an exemption
under 49 U.S.C. 40109 from the
conditions of CAB Order 68-7-55
for Cargo Services Conference Action

Docket OST-2002-11589

ORDER GRANTING EXEMPTION

By application filed February 13, 2002, the International Air Transport Association ("IATA") requests a partial exemption from one of the conditions the Department has imposed upon its "Procedures for the Conduct of the IATA Traffic Conferences" ("bylaws"). That condition requires IATA, through its U.S. air carrier members, to submit all traffic conference resolutions, recommended practices, and any other agreements produced by any of the traffic conferences to the Department of Transportation for individual review, approval and, if requested and granted, antitrust immunity, before they may be declared effective by the conference and implemented by its members.¹

Specifically, IATA requests an exemption from this condition to the extent necessary to permit it to adopt and implement 14 resolutions and recommended practices (RPs) of its worldwide Cargo Services Conference (CSC), without filing for prior approval by the Department and without immunity from U.S. antitrust laws. The list of resolutions and recommended practices is specified in the Appendix to IATA's application of February 13, 2002, and in the Appendix to this order.²

¹ As IATA notes, since the U.S. first approved and immunized the IATA traffic Conference carrier coordinating system in 1946, the Civil Aeronautics Board and its successor, DOT, have enforced general procedural conditions regulating the various tariff, agency and procedures conferences. Reflecting a then-existing statutory requirement that U.S. carriers file for advance government approval every contract or agreement with another carrier affecting foreign air transportation, such a condition was expressly imposed on the bylaws. See, e.g. CAB Order E-3888, February 9, 1950. As last formulated in CAB Order 68-7-55, July 12, 1968, and reaffirmed by DOT in Order 85-5-12, condition #2 requires that "all recommended practices, agreements and resolutions adopted by IATA and each of its conferences and permanent conference committees" be submitted to the CAB/DOT for "appropriate action," which has been construed uniformly as prior review and approval before any implementation by members. The statutory filing requirement has since been made voluntary. See 49 U.S.C. 41309. Unfiled and/or unapproved agreements have no antitrust immunity.

² IATA is not requesting exemption from the Department's filing and prior-approval conditions as they relate to agreements of IATA's tariff or agency conferences.

In support of its application, IATA states that this is the first CSC exemption application it has filed. In Order 2002-1-15, January 29, 2002 (Docket OST-2001-9575), the Department granted a similar exemption for thirty-seven competitively benign resolutions and recommended practices of IATA's Passenger Service Conference (PSC), which can now be maintained without immunity from U.S. antitrust laws. IATA indicates that it is willing to conduct a substantial part of its CSC activities without antitrust immunity, and therefore it seeks the ability to declare the exempted agreements effective according to its internal procedures without the necessity of DOT review. As a first step, IATA has filed the instant application covering 14 cargo services resolutions and recommended practices in a "first tranche." IATA plans to submit further exemption applications covering additional CSC resolutions and recommended practices in the future.

IATA anticipates that all CSC resolutions and recommended practices exempted from filing that have previously been approved and immunized, including the 14 covered by the instant exemption application, would retain their immunity until IATA subsequently amends them and declares the amendments effective. At that point they would no longer have antitrust immunity or need subsequent review and approval in the traditional way.

Decision

We have decided to grant the exemption for the resolutions and recommended practices included in IATA's application. We find the exemption as granted, subject to certain understandings noted below, to be in the public interest.

We are approving the exemption application for the same reasons we approved IATA's application to exempt PSC resolutions and RPs.

Our longstanding conditions have required IATA to file every change to CSC resolutions and recommended practices, whether or not their subject matter presented any policy issues. Many of these amendments involved material such as revalidations of agreements without change upon their expiry date, rescissions, and purely editorial changes. Our conditions have also prompted IATA to request immunity for every agreement filed, whether or not such agreements would present problems or raise questions under U.S. antitrust laws. While the CAB and the Department have maintained that all tariff conference actions are potentially significant and should be subject to prior oversight, the case for reviewing every agreement of the services and agency conferences is less compelling.³ Most of the work of the services conferences have involves technical standards and procedures, and seldom raise public interest issues. The Air Transport Association of America (ATA) has conducted similar work for decades without the benefit of government approval of antitrust immunity. Yet our blanket filing/approval conditions, which applied equally to all of IATA's traffic conferences activities, have forced a time-consuming Department review of many changes of little or no regulatory interest. This process often delays implementation by IATA of more efficient industry procedures that have no

³ The CAB disapproved IATA resolutions jointly setting commissions to/from the US in 1978, and, in 1981, the CAB denied antitrust immunity to agency conferences affecting carrier-agent relations within the United States. U.S. carriers have since then refrained from any participation in agreements fixing or recommending other agent commissions paid by airlines, even outside the United States. IATA's non-U.S. agency conference agreements, therefore, normally present no controversial issues for U.S. authorities.

negative impact on competition or consumers. IATA has made an extensive study of its activities relative to its members' needs, and concluded that it no longer needs to seek antitrust immunity for certain activities. This includes many of the trade association and interline facilitation actions, for which it automatically sought antitrust immunity when forced to submit agreements for prior U.S. approval.

The resolutions and recommended practices for which IATA seeks a filing exemption are generally among those which have been approved consistently in the past by the CAB and DOT; which have not presented consumer protection, competitive or other problems under aviation regulations and policy; and which have been identified by IATA as not raising legal difficulties under U.S. antitrust laws. We are aware of no changed circumstances which might affect these conclusions now or in the future. It is our judgment that the antitrust laws are a sufficient protection against abuse of the discussion authority which DOT has continued to give to the services conferences with regard to the subject matter of these agreements.

The operation of the exemption will be in the manner requested by IATA, as noted above. Upon service of this order, the 14 listed resolutions and recommended practices will no longer have to be filed for review. All existing CSC resolutions will continue to have immunity until future amendments are declared effective by IATA.

Underlying our willingness to undertake this exemption procedure are several necessary understandings, which are consistent with IATA's application. First, the exemption covers only the specific resolutions and recommended practices identified in the application, and their present subject matter. The substantive content in them has remained consistent, notwithstanding occasional textual changes. However, if resolutions are combined, or changed significantly in terms of subject matter, the Department must have sufficient information to be able to determine whether they continue to fall under the exemption.⁴ The Department will monitor the exemption procedure to assure that it is working as intended. Second, the Department has determined that there is an effective and efficient method for the Department and the public to know whether resolutions covered by the exemption have been amended, and thus have no antitrust immunity. IATA has stated that it intends to file a second and third tranche of CSC resolutions and recommended practices for exemption. If such an application for exemption is approved, the filing in DOT public docket will identify for interested parties which resolutions/recommended practices will no longer be reviewed. At the same time, IATA will continue to file all new resolutions/recommended practices in a DOT public docket, for prior review and approval in the case of those agreements not exempted, and "for information," in the case of those agreements that have been exempted.⁵ IATA will identify separately in its application all exempted resolutions whose changes are filed only "for information." This methodology will provide notice to the Department and the public of any changes to exempted resolutions, which no longer have immunity. Like other applicants, IATA files its agreements electronically in our public dockets, and these are available via the internet.

⁴ IATA should assign new identification numbers to new, significantly changed, or consolidated resolutions and recommended practices, and either file an amended exemption application for them or file them for specific approval and immunity.

⁵ IATA files with the Department the same complete package of text amendments, revalidations or other changes to agreements, as well as minutes of the meetings, that are sent to the carrier members from Geneva.

ACCORDINGLY,

1. Consistent with this order and the understandings expressed in it, we grant the application of the International Air Transport Association filed in this docket for an exemption from condition #2 imposed on IATA's Procedures for the Conduct of the IATA Traffic Conferences, Agreement 1175, as amended, by Order 68-7-55, to the extent that IATA need not file the Cargo Services Conference resolutions and recommended practices identified in the Appendix to this order for review and approval by the Department prior to a declaration of effectiveness by IATA and implementation by IATA members;
2. Agreements exempted under paragraph 1 will retain any existing antitrust immunity, subject to conditions imposed, until they are amended or modified and those amendments or modifications are declared effective under IATA's procedures;
3. This exemption may be revoked in whole or in part, at any time; and
4. This order will be served on the International Air Transport Association and published in the Federal Register.

By:

Read C. Van de Water
Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web
http://dms.dot.gov/reports/reports_aviation.asp*

Docket OST-02-11589

Resolutions and Recommended Practices	Descriptions
603	Notice of non- Delivery (Irregularity Report) (IRP)
606	Bar Coded Label
606a	Non-Bar Coded Label
607	Standards for Labels and Tags for Special Shipments
610	Interline Tracer
611	City and Airport Name Abbreviation
656	Automated Data Interchange with Customs
657	Automated Data Interchange with Postal Authorities
696	Airmail Procedures
1600t	Use of Bar Codes and Bar Code Equipment in Cargo Applications
1608	Glossary of Commonly Used Air Cargo Terms
1610	Definition of Consolidated Consignment
1674	Protection of Privacy and Transborder Data Flows of Personal Data Used in International Air Transport of Passengers and Cargo
1681	ULD Technical Manual